

FILE COPY

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION:

FOR A LICENSE TO PRACTICE
AS A PRIVATE DETECTIVE OF

ALLEN P. BRIESCHKE,
APPLICANT.

:
: FINAL DECISION
: AND ORDER
: LS9409014RAL
:

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 7th day of October, 1994.

Patricia C. McCann, Deputy Secretary
Marlene A. Cummings, Secretary
Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION
FOR A LICENSE TO PRACTICE
AS A PRIVATE DETECTIVE OF

LS9409014RAL

ALLEN P. BRIESCHKE

Respondent

PROPOSED DECISION

The parties to this proceeding for the purposes of sec. 227.53, Stats., are:

Wisconsin Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

Allen P. Brieschke
635 Buchanan Road
Kaukauna, WI 54130-3812

A hearing in the above-captioned matter was conducted on September 13, 1994, at 1400 East Washington Avenue, Madison, Wisconsin. The Division of Enforcement appeared by Attorney Gerald M. Scanlan. Mr. Brieschke failed to appear.

Based upon the entire record in this matter, the administrative law judge recommends that the Department of Regulation & Licensing adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Allen P. Brieschke (applicant), 635 Buchanan Road, Kaukauna, Wisconsin 54130-3812, filed his application for a private detective license by his application dated March 24, 1994.

2. On July 22, 1988, applicant was found guilty after trial by jury in Outagamie County Circuit Court Branch V of violation of sec. 940.201(2), Stats., Child Abuse, a felony. The Criminal Complaint leading to the conviction alleges that applicant caused great bodily harm to his infant daughter, born on November 19, 1987.

3. On August 21, 1990, applicant was found guilty after trial by jury in Outagamie County Circuit Court Branch III of violation of secs. 940.19(1), Stats. Battery, and 947.01, Stats., Disorderly Conduct, a misdemeanor. The Criminal Complaint upon which the conviction was based alleges that applicant threatened to cause and caused bodily harm to his wife.

4. On September 29, 1992, applicant was found guilty after trial before the court in Outagamie County Circuit Court Branch III of violation of sec. 940.19(1), Stats., Battery, a misdemeanor. The Criminal Complaint upon which the conviction was based alleges that applicant caused bodily harm to his former wife.

5. The circumstances of each of the convictions set forth herein substantially relate to the circumstances of the practice of a private detective.

CONCLUSIONS OF LAW

1. The department has jurisdiction in this matter pursuant to sec. 440.26, Stats.

2. The circumstances of the convictions set forth above are substantially related to the circumstances of the practice of a private detective within the meaning of secs. 111.335, Stats.

3. In having been convicted of crimes the circumstances of which are substantially related to the practice of a private detective, applicant's application for a license to practice as a private detective is subject to denial under secs. 440.26(2)(c), Stats., RL 31.02(2)(a), Code, RL 31.05, Code, and RL 35.01(2), Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the denial of the application for a license to practice as a private detective of Allen P. Brieschke be, and hereby is, affirmed, and the license is therefore denied.

OPINION OF THE ADMINISTRATIVE LAW JUDGE

Section 111.322, Stats., provides that no licensing agency may refuse to license any individual on the basis of an arrest or conviction record. However, Sec. 111.335(1)(c)1., Stats., states:

(c) Notwithstanding s. 111.322, it is not employment discrimination because of a conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony or misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity

The question therefore becomes whether the circumstances of Mr. Brieschke's convictions for child abuse and battery to his wife substantially relate to the circumstances of the practice of a private detective so as to support the department's decision to deny the license. The practice of a private detective is defined at sec. RL 30.02(12)(a), Code, as follows:

(12)(a) "Private detective" means any of the following:

1. A person who acts as, uses the title or otherwise represents that the person is a private detective, private investigator or special investigator.

2. A person engaged for compensation or other consideration on behalf of another, in investigating or otherwise obtaining or furnishing information relating to any of the following:

a. Crimes or wrongs done or threatened against the United States, any state or territory, or any political subdivision thereof.

b. The identity, conduct, business, honesty, movement, whereabouts affiliations, associations, transactions, acts, reputation or character of any person, if such information is obtained in secret, without knowledge of the person being observed.

c. The location, disposition or recovery of lost or stolen property.

d. The cause or responsibility for fires, libels, losses, accidents, damage, injury or death.

e. Securing evidence to be used before any court, board, officer, or investigating committee.

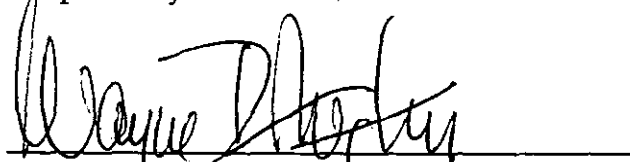
As testified at hearing, the determination whether to license as a private detective a person who has been convicted of a crime is a three part inquiry. the first of these is the length of time since the conviction; that is, whether the conviction is recent or sufficiently remote in time to suggest that the applicant is no longer likely to engage in the kind of conduct for which convicted. In this case, Mr. Brieschke's most recent conviction for battery occurred on September 29, 1992, just 18 months prior to his application for a license. The second inquiry is whether there is any evidence of rehabilitation so as to permit the conclusion that the misconduct will probably not reoccur. Mr. Brieschke's third conviction occurred while Mr. Brieschke was still on probation for the second conviction, and there is thus no basis for concluding that rehabilitation has occurred.

Neither of the foregoing inquiries is relevant, however, unless the circumstances of the conviction substantially relate to the circumstance of the practice of a private detective. As testified at hearing, Mr. Brieschke's convictions involved crimes against persons, including abuse of his infant child and battery to his wife. As also testified, the practice of a private detective includes working with people in gathering information and investigating persons in situations which frequently involve stressful and even threatening circumstances. It is not necessary to further detail the crimes of which Mr. Brieschke was convicted to conclude that he has difficulty in handling stress and in keeping himself under control in stressful situations. There is thus a direct link between the circumstances of the convictions and the practice of a private detective.

It is possible that had Mr. Brieschke appeared at the hearing he could have provided further information relating to either the circumstances of the convictions or to reformatory action taken in the two years since the last one. Because he did not appear, however, there is no evidence in this record which would support a reversal of the department's initial decision to deny the application and, accordingly, that decision must be affirmed.

Dated this 16th day of September, 1994.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Wayne R. Austin", is written over a horizontal line.

Wayne R. Austin
Administrative Law Judge

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING.

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

OCTOBER 7, 1994.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)